

JAMES A. SCHWEIZER)	
)	
Claimant-Respondent)	
)	
v.)	
)	
FEDERAL MARINE TERMINALS)	DATE ISSUED: <u>Dec. 11, 2001</u>
)	
and)	
)	
FRANK GATES ACCLAIM)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Compensation Order - Award of Attorney's Fees of Thomas C. Hunter, District Director, United States Department of Labor.

H. Thomas Lenz (Spector & Lenz, P.C.), Chicago, Illinois, for claimant.

Gregory P. Sujack (Garofalo, Schreiber & Hart, Chartered), Chicago, Illinois, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order - Award of Attorney's Fees (No. 10-37788) of District Director Thomas C. Hunter rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant alleged repetitive trauma injuries to his right arm and shoulder while working as a crane operator, in a claim stemming from an accident occurring on April 1,

1999. The matter was set for a formal hearing, but the parties entered into a settlement agreement for \$20,000 pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). The case was remanded to the district director, and the settlement was approved. Claimant's counsel thereafter requested a fee for services rendered on claimant's behalf between March 3, 1999, and September 8, 2000, for 16.25 hours at an hourly rate of \$160, 60.5 hours at an hourly rate of \$175, 26.5 hours at \$40 per hour for the services of a law clerk, and \$211.30 in expenses, for a total fee of \$14,463.80. Employer filed objections to claimant's counsel's fee petition and claimant responded to the objections.

After reviewing employer's objections to the fee petition, the district director disallowed 22 hours for work performed by the law clerk, and one hour spent on spreadsheet preparation on July 3, 2000, concluding that the remaining time was reasonable. Accordingly, he awarded claimant's counsel a fee of \$13,403.80, representing 16.25 hours at \$160 per hour, 59.5 hours at \$175 per hour, \$180 in law clerk costs and \$211.30 in expenses.

On appeal, employer challenges the district director's fee award on various grounds. Claimant responds, urging affirmance. Employer has filed a reply brief.

Initially, employer's objection to counsel's method of billing in minimum increments of one-quarter of an hour is rejected. The Board has previously determined that this method is reasonable under the applicable regulation, 20 C.F.R. §702.132. *Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986); *cf. Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). We also reject employer's contention that it is not liable for fees for work performed prior to the filing of claimant's claim. Under Section 28(a), if an employer declines to pay any compensation within 30 days after receiving a claim from the district director and the claimant's attorney's services result in a successful prosecution of the claim, claimant is entitled to an attorney's fee award payable by employer. 33 U.S.C. §928(a). In *Liggett v. Crescent City Marine Ways*, 31 BRBS 135 (1997)(*en banc*) (Smith and Dolder, J.J., concurring and dissenting), the Board held that once employer's liability for an attorney's fee is triggered under Section 28(a), employer is liable for a reasonable fee for *all* services rendered in the successful prosecution of the claim, not only for the services rendered after the date of notice of the claim and the declination to pay. For the reasons stated in *Liggett*, we reject employer's objections to an award of fees for three hours of services rendered prior to claimant's submission of his claim form.

Employer also contends that the district director erred in awarding claimant's counsel a fee for 1.25 hours to attend a medical examination conducted by Dr. Haskell, a physician chosen by employer. As the district director allowed this item as an optional, but important service to claimant in a potentially adverse evaluation, and concluded that it was reasonable,

we affirm the district director's finding that this time was necessary and reasonable. We likewise affirm the district director's allowance of one hour spent on June 21, 2000, relating to review of employer's Section 8(f), 33 U.S.C. §908(f), application, as the district director considered employer's objection to this entry and concluded that the brief time involved is reasonable, given that there is no absolute bar to inclusion of such time, and that often the application contains evidence or raises procedural issues of relevance. With regard to employer's remaining objections to specific entries in counsel's fee petition, we note that the district director considered employer's contentions and found the itemizations at issue to be reasonable and necessary. We decline to further reduce or disallow the fee awarded by the district director, as employer's assertions on appeal are insufficient to meet its burden of proving that the district director abused his discretion. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1991).

Finally, we decline to address employer's contention that the fee award is excessive in relation to the success obtained, as this contention was not raised below. *See Pozos v. Army & Air Force Exch. Serv.*, 31 BRBS 173 (1997); *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.2d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

Accordingly, the district director's Compensation Order - Award of Attorney's Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge